

Prior to the entry of final judgment in the divorce action, Mr. Wilson retired from the police department. *See* Pl.’s Ex. C (Mr. Wilson’s Application for Service Retirement) 1. Mr. Wilson applied for service retirement on December 27, 1994. *See id.* He subsequently submitted a “Member’s Election of Retirement Benefits” to the Employee Retirement System on March 15, 1995 through which he selected the “maximum retirement allowance with continuing benefits to [his] wife (Marilyn Wilson) immediately upon [his] death.” Pl.’s Ex. E (Mr. Wilson’s Election of Retirement Benefits) 1.

On April 29, 1995, Marilyn and Mr. Wilson executed a Property Settlement Agreement to divide their property and to determine support obligations. *See* Pl.’s Ex. F (Property Settlement Agreement) 1-2. The Property Settlement Agreement provided in pertinent part that:

“It is acknowledged by the parties that the husband has a pension with the City of Providence, which has a marital coverture value of approximately \$300,000.00 The parties agree that [Mr. Wilson] shall have all right, title and interest to said pensions to the exclusion of [Marilyn], subject to the provisions set forth in paragraph FIFTH, entitled ‘Alimony.’” *Id.* at 2.

The fifth paragraph stated that:

“[Mr. Wilson] shall nominate [Marilyn] as the designated beneficiary to receive his survivor pension benefits from the City of Providence To effectuate the nomination of [Marilyn] as [Mr. Wilson’s] designated survivor beneficiary on his said pension with the City of Providence, [Mr. Wilson] shall nominate [Marilyn] by written designation duly executed and filed with the Retirement Board of the Employees’ Retirement System The parties shall execute any and all necessary documents to effectuate this provision of the within Agreement. In addition, [Mr. Wilson] shall not in any way alienate the survivor benefit to the detriment of [Marilyn], as set forth hereinabove and shall further take all the requisite steps to protect her status as the survivor beneficiary on his pension benefits with the City of Providence It is acknowledge[d] by the parties that it is the intention that [Marilyn] be an irrevocable beneficiary on any of the pension, or annuity benefits that the husband has with the City of Providence” *Id.* at 5-6.

On June 1, 1995, the Family Court entered a Decision Pending Entry of Final Judgment which incorporated the terms of the Property Settlement Agreement by reference but did not merge the terms into the judgment. (Pl.’s Ex. H (Decision Pending Entry of Final J.) 1.) On September 21, 1998, the Family Court entered a Final Judgment of Divorce indicating that the terms of the Property Settlement Agreement were incorporated by reference but not merged into the final agreement. *See* Pl.’s Ex. J (Final J. of the Family Ct.) 2.

On May 4, 2007, Mr. Wilson married Co-Defendant Diane Wilson. (Pl.’s Ex. M (Marriage Certificate to Diane). Mr. Wilson and Diane lived together during their marriage and shared property and financial resources until Mr. Wilson’s death on December 5, 2020. *See* Diane Aff. ¶¶ 2-7. After Mr. Wilson’s death, the City began paying surviving spouse benefits to Diane. *Id.* ¶ 10.

On January 5, 2021, Marilyn, by and through her attorney, contacted Ken Chiavarini, the City’s attorney, indicating that she was entitled to surviving spouse benefits pursuant to the divorce decree and asking what steps she should take to begin receiving payments. *See* Pl.’s Ex. Q (E-Mail Chain) 6. After some conversation, Mr. Chiavarini replied that any death benefit under Mr. Wilson’s Maximum Option pension would have been used up approximately ten and a quarter years after his retirement, leaving none to be paid to Marilyn as the designated beneficiary. *Id.* at 2. Mr. Chiavarini also informed Marilyn that the surviving spouse benefit pursuant to G.L. 1956 § 45-21.3-1 was to be paid to the *current* surviving spouse. *Id.*

On April 29, 2021, Marilyn filed an *ex parte*, post-judgment motion for a Writ of Execution in the divorce action, requesting that the Family Court “issue a Writ of Execution regarding [Marilyn’s] property right to survivor pension benefits from the City of Providence pursuant to her status as his surviving spouse, as indicated in the Family Court Final Judgment, Property Settlement Agreement, and Decision pending Entry of Final Judgment.” (Pl.’s Ex. R (Mot. for

Writ of Execution) 1.) The Family Court granted Marilyn’s motion; however, after Marilyn filed another Post-Judgment Motion for Relief to which the City filed objections, the Family Court declined to rule on the issue of whether the City was required to pay the surviving spouse benefit to Marilyn and dismissed the Post-Judgment Motion for Relief. *See* Pl.’s Ex. S (Order Regarding Writ of Execution) 1; Pl.’s Ex. W (Post-Final J. Mot. for Relief) 1-5; Pl.’s Ex. X (City’s Obj. to Pl.’s Post-Final Mot. for Relief) 1-4; *see also* Mem. of Law Supp. Pl.’s Mot. for Summ. J. (Pl.’s Summ. J. Mem.) 11; Mem. of Law Supp. Mot. for Summ. J. of Diane (Diane’s Summ. J. Mem.) 5.

On March 8, 2022, Marilyn filed a three-count complaint against the City and Diane. (Compl. ¶¶ 50-65.) Count I is a declaratory judgment claim asserted against the City and Diane seeking a declaration that “[Marilyn] is entitled to the survivor pension benefits of Mr. Wilson from the City” (Compl. ¶¶ 50-55.) Count II is a breach of contract claim against the City seeking damages for the City’s alleged breach of its contractual obligation to provide Marilyn with the surviving spouse benefit. *Id.* ¶¶ 56-61. Count III is a claim for injunctive relief asking for this Court to issue injunctive relief with respect to the surviving spouse benefit. *Id.* ¶¶ 62-65.

Diane and the City subsequently filed their answers to Marilyn’s Complaint. *See* Docket. On November 7, 2022, Diane filed a cross-claim against the City asserting one count for declaratory relief seeking a declaration that she is the surviving spouse of Mr. Wilson and that she is entitled to Mr. Wilson’s surviving spouse pension benefits from the City. (Co-Def. Diane’s Cross-cl. Against Co-Def. the City (Diane’s Cross-cl.) ¶¶ 15-17.) On November 16, 2022, the City filed its answer to Diane’s Cross-claim. *See* Docket.

On March 6, 2023, Marilyn filed the instant Motion for Summary Judgment, and Diane filed her Motion for Summary Judgment. *Id.* The City subsequently filed a response memorandum

to both parties' motions, and Marilyn filed her objection to Diane's motion. *Id.* Diane subsequently filed her opposition to Marilyn's motion and her reply to Marilyn's objection. *Id.* Lastly, Marilyn filed her reply to Diane's objection, and the City filed its response to Marilyn's objection. *Id.*

On May 10, 2023, this Court heard the parties' arguments on their motions for summary judgment and reserved its judgment. *See id.* On June 27, 2023, Defendant Wilson filed a Supplemental Memorandum in Support of her Motion for Summary Judgment and in Support of her Objection to Marilyn's Motion for Summary Judgment. *Id.* Marilyn filed her Supplemental Memorandum of Law in Support of her Motion for Summary Judgment and Objection to Defendant Diane's Motion for Summary Judgment on July 26, 2023. *Id.* Accordingly, Marilyn and Diane's motions for summary judgment are now before this Court for disposition.

II

Standard of Review

“‘[S]ummary judgment is a drastic remedy, and a motion for summary judgment should be dealt with cautiously.’” *DeMaio v. Ciccone*, 59 A.3d 125, 129 (R.I. 2013) (quoting *Estate of Giuliano v. Giuliano*, 949 A.2d 386, 390 (R.I. 2008)). Under Rule 56 of the Superior Court Rules of Civil Procedure, a court should only grant a motion for summary judgment when the competent evidence, viewed in the light most favorable to the non-moving party, “show[s] that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as matter of law.” Super. R. Civ. P. 56(c); *see also Andrade v. Westlo Management LLC*, 276 A.3d 393, 399-400 (R.I. 2022). The court should examine the factual evidence contained in “the pleadings, depositions, documents, electronically stored information, answers to interrogatories, and admissions on file, together with the affidavits . . . ,” Super. R. Civ. P. 56(c), but the parties may not rest on mere allegations or denials contained in the pleadings. *See Loffredo v. Shapiro*, 274

A.3d 782, 790 (R.I. 2022). Once the movant has alleged the *absence* of material factual issues, the opposing party has an affirmative duty to provide evidence of the existence of material factual disputes. *Id.* Disputes of any fact will not defeat a motion for summary judgment. *See Deutsche Bank National Trust Co. v. McDonough*, 160 A.3d 306, 311 (R.I. 2017). The party opposing the motion must instead present evidence that is “pertinent to the claim or the defense which is actually being asserted.” *Saltzman v. Atlantic Realty Co., Inc.*, 434 A.2d 1343, 1345 (R.I. 1981).

III

Analysis

A

Statute of Limitations

As an initial matter, this Court must address Diane’s argument that Marilyn’s claims are time-barred pursuant to *Capaldi v. Capaldi*, 295 A.3d 822, 826-27 (R.I. 2023). *See* Co-Def. Diane’s Suppl. Mem. Supp. Mot. for Summ. J. and Supp. Obj. to Pl.’s Mot. for Summ. J. (Co-Def. Diane’s Suppl. Mem.) 1. Diane argues that under *Capaldi*, Marilyn’s claims are barred by G.L. 1956 § 9-1-17 because § 9-1-17 dictates that actions on judgments shall be commenced within twenty years after the cause of action accrues and Marilyn filed her claim twenty-three years after final judgment was entered in the divorce. (Co-Def. Diane’s Suppl. Mem. 2-5.) Marilyn argues that her claims are not time-barred because her claims accrued when the City refused to comply with the property settlement agreement and final judgment in 2021. (Suppl. Mem. Supp. Pl.’s Mot. for Summ. J. and Obj. to Co-Def. Diane’s Mot. for Summ. J. (Pl.’s Suppl. Mem.) 1.) Marilyn distinguishes our Supreme Court’s decision in *Capaldi* by noting that the *Capaldi* plaintiff could have discovered the existence of her ex-husband’s pension during the divorce, but here, Marilyn could not have discovered her injury until the City refused to pay her. *Id.* at 2-4.

Diane’s reliance on *Capaldi* is unavailing because *Capaldi* concerned a motion to re-open a final divorce judgment and a property settlement agreement that was incorporated and merged into the final divorce judgment, while the instant complaint seeks the enforcement of a property settlement agreement that was incorporated but not merged into a final judgment. *Cf. Capaldi*, 295 A.3d at 826-27, with Compl. ¶¶ 16-18, 50-65, and Final J. of the Family Ct. 2. The statute of limitations applicable to a property settlement agreement that is incorporated and merged into a divorce judgment is the twenty-year statute of limitations which governs the limitations of actions on judgments. *See Capaldi*, 295 A.3d at 826-27. Accordingly, a party seeking relief from that judgment must file within twenty years of the Family Court’s final divorce judgment. *See id.* However, the statute of limitations applicable to a property settlement agreement that is incorporated but not merged into a divorce judgment is the ten-year statute of limitations applicable to breach of contract claims. *See Curato v. Brain*, 715 A.2d 631, 635 (R.I. 1998); *see also* 32 Causes of Action 2d 569 § 30 (2006). Accordingly, a party claiming a breach of the property settlement agreement should file within ten years of the breach. *See Curato*, 715 A.2d at 635. Additionally, “[a]s a general rule, an action for declaratory judgment will be barred to the same extent that the applicable statute of limitations bars an underlying action in law or equity.” *See* 22A Am. Jur. 2d *Declaratory Judgments* § 182 (May 2023 Update); 26 C.J.S. *Declaratory Judgments* § 120 (August 2023 Update).

In the instant case, Marilyn is seeking a declaratory judgment interpreting the Property Settlement Agreement that was incorporated but not merged into the final divorce judgment. *See* Compl. ¶¶ 50-55; Final J. of the Family Ct. 2. She is also seeking to enforce the City’s pension agreement with Mr. Wilson as his successor in interest. (Compl. ¶¶ 56-61.) Accordingly, the statute of limitations on Marilyn’s claim expires ten years after the alleged breach of these

agreements. *See* 22A Am. Jur. 2d *Declaratory Judgments* § 182 (May 2023 Update) (the statute of limitations applicable to a declaratory judgment claim is the one applicable to the underlying action); *Curato*, 715 A.2d at 635 (the statute of limitations on a property settlement agreement that was incorporated but not merged into the divorce judgment expired ten years after the breach); *OSJ of Providence, LLC v. Diene*, 154 A.3d 460, 464 n.7 (R.I. 2017) (“The statute of limitations for bringing a breach of contract claim is ten years.”). Although the record does not reveal the exact date that the City allegedly breached its agreement and declined to provide the surviving spouse benefit to Marilyn, the earliest that such a violation could have occurred is December of 2020—the month that Mr. Wilson died. *See* Diane’s Aff. ¶ 3. Therefore, the statute of limitations on Marilyn’s claims expires in December of 2030, and her Complaint—filed on March 8, 2022—is not time-barred. *See Curato*, 715 A.2d at 635.

B

“Surviving Spouse” and “Dependent Spouse” Pursuant to § 45-21.3-1 and Providence Code § 17-189(m)(6)

Marilyn is seeking summary judgment as to Count I (Declaratory Judgment) of her Complaint. (Pl.’s Summ. J. Mem. 1 & n.1.) Specifically, Marilyn is asking the Court to declare that, “pursuant to the plain and unambiguous assignment of survivor pension benefits in the Final Judgment and Property Settlement Agreement, [Marilyn] is Mr. Wilson’s ‘surviving spouse’ for purposes of receiving pension benefits under . . .” G.L. 1956 § 45-21.3-1 and § 17-189(m)(6) of the Providence Code of Ordinances. *Id.* at 13. Diane has also moved for summary judgment arguing that there are no genuine issues of material fact that *she* is the surviving spouse of Mr. Wilson and is “entitled to judgment as a matter of law awarding her surviving spouse benefits

under her late husband’s retirement pension pursuant to R.I.G.L. § 45-21.3-1 and City of Providence Ordinance § 17-189(m)(6).”² (Diane’s Summ. J. Mem. 1.)

The purpose of the Uniform Declaratory Judgments Act (UDJA) is to “facilitate the termination of controversies.” *Fireman’s Fund Insurance Co. v. E. W. Burman, Inc.*, 120 R.I. 841, 845, 391 A.2d 99, 101 (1978). “The decision to grant or to deny declaratory relief under the [UDJA] is purely discretionary.” *Sullivan v. Chafee*, 703 A.2d 748, 751 (R.I. 1997). The UDJA provides that the Superior Court “shall have power to declare rights, status, and other legal relations whether or not further relief is or could be claimed.” Section 9-30-1. Accordingly, pursuant to the UDJA, the Superior Court has the power to “determine the rights of any person that may arise under a statute . . . ,” see *Canario v. Culhane*, 752 A.2d 476, 479 (R.I. 2000), and the power to determine the contractual obligations of the parties. See *Capital Properties, Inc. v. State*, 749 A.2d 1069, 1081 (R.I. 1999).

1

Statutory Interpretation

Marilyn argues that she is Mr. Wilson’s “surviving spouse” under § 45-21.3-1 and Section 17-189(m)(6) of the Providence Code of Ordinances. (Pl.’s Summ. J. Mem. 14.) (citing City of Providence, Code of Ordinances (Providence Code), Suppl. No. 5, § 17-189(m)(6) (Sept. 7, 2022)). Marilyn contends that the surviving spouse benefit is assignable in a divorce decree because § 45-21.3-1 and Section 17-189(m)(6) do not have an anti-alienation provision. *Id.* at 14 n.5 (citing to Providence Code §§ 17-118, 17-128, 17-130); Pl.’s Obj. to Def. Diane’s Mot. for Summ. J. (Pl.’s

² The City, noting that Marilyn and Diane have only moved for summary judgment on their claims for declaratory relief, explicitly reserves its right to respond to Counts II and III of Marilyn’s Complaint. (Mem. Resp. to Pl.’s Mot. for Summ. J. & Co-Def.’s Mot. for Summ. J. (City’s Resp. Mem.) 1.)

Obj.) 3-4. Additionally, she urges this Court to follow the approach taken by the Superior Court in *The Providence Retired Police and Firefighter's Association v. City of Providence*, No. PC-2020-08024, 2023 WL 4317728 (R.I. Super. June 26, 2023), and determine that she qualifies as the surviving or dependent spouse because there is nothing in either the statute or the ordinance to restrict the application of the statute to the person who is married to the retiree upon their death. (Pl.'s Suppl. Mem. 4-8.)

In response, Diane argues that she is the “surviving spouse” and “dependent spouse” under § 45-21.3-1 and § 17-189(m)(6) because pursuant to the plain meaning of the word “spouse,” a spouse is someone united to another person by marriage who is living and not divorced. (Diane’s Summ. J. Mem. 6-8.) Accordingly, because Diane was lawfully married to Mr. Wilson at the time of his death, she argues that she, rather than Marilyn, is Mr. Wilson’s surviving and dependent spouse. *Id.* at 8; Co-Def. Diane’s Mem. Supp. Obj. (Diane’s Obj.) 10; Reply Mem. of Co-Def. Diane (Diane’s Reply) 3. Furthermore, Diane notes that typical survivor benefits are distinct from the “surviving spouse” benefit because the typical survivor benefits may be paid to any person who the pension holder may designate. *See* Diane’s Obj. 15-17.

The City argues that by the mandatory language of section 17-189(m)(6), the City Council’s clear intent in enacting the ordinance was to ensure the economic security of the surviving spouse of police officers. (City’s Resp. Mem. 4.) The City notes that there are no exceptions to the requirement that the surviving spouse benefit be paid to the retiree’s surviving spouse, and that the ordinance provides clearly that if there is no surviving spouse, the benefit is to be paid to the retiree’s children. *Id.* at 4-5. Additionally, the City contends that the plain language of § 45-21.3-1 indicates that the Legislature enacted the statute to ensure the economic

security and wellbeing of the surviving spouse of a police officer, rather than the *former* spouse. *Id.* at 5.

“When interpreting an ordinance, we employ the same rules of construction that we apply when interpreting statutes.” *Ryan v. City of Providence*, 11 A.3d 68, 70 (R.I. 2011). Accordingly, the Court must ascertain the Legislature, or the City Council’s, intent in enacting the legislation. *See State ex rel. Town of Tiverton v. Pelletier*, 174 A.3d 713, 718 (R.I. 2017). The best indication of legislative intent is a statute’s plain language. *See* 3 Shambie Singer, *Sutherland Statutory Construction* § 57:2 (8th ed. November 2022 Update). Accordingly, “if the language of a statute or ordinance is clear and unambiguous, it is given ‘its plain and ordinary meaning.’” *City of Woonsocket v. RISE Prep Mayoral Academy*, 251 A.3d 495, 500 (R.I. 2021) (quoting *Sauro v. Lombardi*, 178 A.3d 297, 304 (R.I. 2018)). “In giving words their plain-meaning, however . . . [the] ‘approach is not the equivalent of myopic literalism.’” *See Ryan*, 11 A.3d at 71. As such, the Court will determine the meaning of a statute or ordinance in the context of the entire statutory scheme. *See id.*

The statute and ordinance at issue relate to the City’s retirement system. *See* § 45-21.1-1; Providence Code § 17-189(m)(6). Rather than accepting the Municipal Employees’ Retirement System of the State of Rhode Island as set forth in § 45-21-1 to § 45-21-67 and §45-21.2-1 to §45-21.2-25, the City has adopted a home rule charter and governs its own retirement system by ordinance. *See* § 45-21-4; Providence Code § 17-182; *see also Bruckshaw v. Paolino*, 557 A.2d 1221, 1223-24 (R.I. 1989). Nevertheless, § 45-21.3-1 provides that:

“Upon the death of any regular and permanent police official . . . who has retired from the service of any city or town which has not accepted chapter 21 or 21.2 of this title, sixty-seven and one-half percent (67 ½ %) of the benefits paid to the retired police officer or fire fighter *shall* be paid to his or her *dependent spouse*, for his or her lifetime until he or she remarries, or if there is no spouse or the

spouse remarries, then to his or her dependent children until they attain the age of eighteen (18).” Section 45-21.3-1 (emphasis added).

Additionally, section 17-189(m)(6) of the Providence Code of Ordinances provides that:

“Upon the death of any class B member who has retired from service, if no pension is payable pursuant to this subsection 17-189(g)(3) of this section, a pension equal to sixty-seven and one-half (67½) percent of the retirement allowance, exclusive of any excess annuity, paid to such retired member *shall* be paid to his *surviving spouse*, for her lifetime until she remarries, or if there be no surviving spouse or the surviving spouse remarries, then to his dependent children until they attain the age of eighteen (18).” Providence Code § 17-189(m)(6) (emphasis added).

Given the use of the mandatory language “shall,” if an eligible, deceased retiree has a spouse, then the “dependent spouse” or the “surviving spouse” is the sole person who is entitled to receive the pension equal to sixty-seven and one-half percent of the decedent’s retirement allowance (hereinafter “the surviving spouse benefit.”). *See* § 45-21.3-1; Providence Code § 17-189(m)(6); *see also Castelli v. Carcieri*, 961 A.2d 277, 284 (R.I. 2008) (the use of the word shall generally contemplates something mandatory). The term “spouse” refers to “[o]ne’s husband or wife by lawful marriage.” *See Spouse*, Black’s Law Dictionary (11th ed. 2019). Accordingly, pursuant to the plain and unambiguous language of the statute and ordinance, “surviving spouse” and “dependent spouse” refers to the retiree’s husband or wife by lawful marriage who is surviving or dependent on the retiree “upon [their] death.” *See Planned Environments Management Corp. v. Robert*, 966 A.2d 117, 123 (R.I. 2009) (when a term is not defined by statute its meaning may be gleaned from a recognized dictionary); § 45-21.3-1; Providence Code § 189(m)(6).

Contrary to Marilyn’s argument that there is no language in the statute or ordinance to limit the term “spouse” to one’s current spouse, the term “spouse” *by itself* refers to a person who is lawfully married, rather than a person who was *previously* lawfully married. *See Spouse*, Black’s

Law Dictionary (11th ed. 2019). Additionally, there is absolutely nothing in the language of the statute or ordinance to indicate that the term “spouse” should encompass a person’s “ex-spouse” or “former spouse.” *See* § 45-21.3-1; Providence Code § 17-189(m)(6). Moreover, the condition that the surviving or dependent spouse be entitled to the surviving spouse benefit “until she remarries” envisions that the surviving spouse *was* lawfully married to the decedent “upon [his] death.” *See* § 45-21.3-1; Providence Code § 17-189(m)(6). As such, pursuant to the plain language of § 45-21.3-1 and § 17-189(m)(6) of the Providence Code of Ordinances, the surviving spouse benefit was clearly intended to go to the person who was married to the retiree at the time of their death, rather than their ex-spouse. *See* § 45-21.3-1; Providence Code § 17-189(m)(6).

Marilyn’s argument that the absence of an anti-alienation provision in § 45-21.3-1 and § 17-189(m)(6) shows that the surviving spouse benefit can be awarded to someone other than a retiree’s spouse is unavailing. *See* Pl.’s Summ. J. Mem. 14 n.5; Pl.’s Obj. 3-4. Although the City Council elsewhere specified that certain benefits “shall not be assignable, attachable or transferable,” *see* Providence Code § 17-119, the absence of such an anti-alienation provision in § 17-189(m)(6) does not indicate that the surviving spouse benefit may be paid to someone else because the City Council specifically provided that the surviving spouse benefit “*shall be* paid to his *surviving spouse . . .*” *See id.* § 17-189(m)(6). By contrast, the other death benefits available to the survivors of Class B employees—like Mr. Wilson³—are explicitly awardable to any “such person” that the employee or his legal representative nominates “by written designation duly” executed or acknowledged “and filed with the retirement board.” *Cf. id.* § 17-189(m)(6), *with id.* §§ 17-189(m)(4), 17-190. Accordingly, it is clear that the surviving spouse benefit is only available to the “surviving spouse” or “dependent spouse” rather than any person who the retiree

³ Class B employees include police officers, like Mr. Wilson. *See* Providence Code § 17-181.3.

wishes to designate. *Cf.* § 45-21.3-1, and Providence Code § 17-189(m)(6), with §§ 17-189(m)(4), 17-190.

Lastly, interpreting the term “surviving spouse” as including a decedent’s surviving ex-spouse would contravene the City Council and General Assembly’s clear intent. The court “must not construe a ‘statute in a way that would result in absurdities or would defeat the underlying purpose of the enactment.’” *Commercial Union Insurance Co. v. Pelchat*, 727 A.2d 676, 681 (R.I. 1999) (quoting *Matter of Falstaff Brewing Corp.*, 637 A.2d 1047, 1050 (R.I. 1994)).

The surviving spouse benefit may only be paid to the surviving spouse, until she remarries, and if “there be no surviving spouse or the surviving spouse remarries, then to his dependent children until they attain the age of eighteen (18).” Providence Code § 17-189(m)(6); *see also* § 45-21.3-1 (similarly providing that surviving spouse benefit may only be paid to the dependent spouse, until he or she remarries, and if “there is no spouse or the spouse remarries, then to his or her dependent children until they attain the age of eighteen (18).”). Accordingly, the statute and the ordinance were clearly intended to provide financial support to the spouse or the minor children of a deceased retiree during a time in which the spouse or children may be financially vulnerable. *See id.* It would be contrary to that intent to interpret the statute and ordinance as permitting an ex-spouse to receive the surviving spouse benefit, particularly when Mr. Wilson had a current spouse at the time of his death who may need financial support. *See id.* As such, pursuant to the plain language, the context, and the clear intent of the statute and ordinance, Marilyn is not Mr. Wilson’s “surviving spouse,” or “dependent spouse” under § 45-21.3-1 or Providence Code § 17-189(m)(6). Diane, as the woman who was lawfully married to Mr. Wilson upon his death, is his “surviving” and “dependent spouse” under § 45-21.3-1 and Providence Code § 17-189(m)(6).

The Effect of the Final Judgment of the Family Court & the Property Settlement

Marilyn also argues that she is entitled to the surviving spouse benefit pursuant to the Property Settlement Agreement and the Final Judgment of the Family Court. *See* Pl.’s Summ. J. Mem. 15-18. Specifically, she contends that the clear and unambiguous language of the Property Settlement and Final Judgment assigned her the surviving spouse benefit. *See* Pl.’s Obj. at 5-6; Reply Mem. Supp. Pl.’s Mot. for Summ. J. (Pl.’s Reply) 11. She urges the Court to find that the Final Judgment and Property Settlement Agreement obtained in the underlying divorce are controlling because: (1) the Family Court is empowered to equitably distribute marital property in a divorce; (2) our Supreme Court has recognized that pension benefits are marital property; and (3) the Family Court in the underlying divorce action assigned Marilyn the surviving spouse benefit. (Pl.’s Reply 8-10.) She further relies on the Family Court’s decision in *Loveless v. Loveless*, KC-2014-0857, which granted an ex-wife’s motion for a writ of execution seeking to enforce a property settlement agreement which designated her as the “surviving spouse” of the defendant. *See* Pl.’s Summ. J. Mem. 16-17.

Marilyn also asserts that she obtained a separate and unalienable property interest in the surviving spouse benefit upon entry of final judgment in the divorce. *See id.* at 20. Marilyn contends that if this Court were to “award survivor pension benefits to Diane, [it] would undermine the Family Court’s authority to equitably divide marital property upon divorce.” (Pl.’s Summ. J. Mem. 20.) Further, Marilyn argues that the City is bound by the Final Judgment and Property Settlement agreement because the Family Court has jurisdiction to affect the rights of third parties not involved in the divorce. (Pl.’s Summ. J. Mem. 20-21; Pl.’s Obj. 10-12.)

In response, Diane argues that the property settlement agreement entered in the divorce action cannot displace the statutory language of § 45-21.3-1 or § 17-189(m)(6) because a property settlement agreement that is incorporated into a divorce, rather than merged, retains the characteristics of a contract, and a contract that contravenes the law is void. *See* Diane’s Summ. J. Mem. 9-10. Diane also contends that because the Family Court possesses limited jurisdiction and an administrative agency is not authorized to modify the statutory provisions under which it acquired power, the Family Court could not order the Employee Retirement System to pay the surviving spouse benefit to anyone other than the pension-holder’s surviving spouse under *Furia v. Furia*, 638 A.2d 548, 552 (R.I. 1994). (Diane’s Obj. 18.) In the alternative, Diane argues that Marilyn is not entitled to summary judgment because there are genuine issues of material fact that preclude summary judgment. (Diane’s Obj. 1-10.)

The City argues that the question of whether a final judgment of divorce can divest a surviving spouse of a statutorily guaranteed right to a pension benefit is one of first impression in Rhode Island but expresses no opinion on whether the final judgment entered by the Family Court expressly assigned the survivor spouse’s rights to Marilyn. *Id.* at 7-8.

Marilyn cannot rely on the terms of the Final Judgment to award her the surviving spouse benefit because the Property Settlement Agreement was incorporated, rather than merged, into the Final Judgment of the Family Court. *See Riffenburg v. Riffenburg*, 585 A.2d 627, 630 (R.I. 1991). When a separation agreement is incorporated, but not merged into a divorce judgment, it “retains the characteristics of a contract.” *See id.* Accordingly, a property settlement agreement that was not merged into the final judgment is a separate and independent contract. *See Gorman v. Gorman*, 883 A.2d 732, 740 (R.I. 2005). This rule applies even when the final judgment duplicates the provisions contained in the non-merged separation agreement. *See Riffenburg*, 585 A.2d at 631.

Here, both the Decision of the Family Court pending entry of final judgment and the Final Judgment of the Family Court clearly state that the Property Settlement Agreement shall be incorporated but not merged into the judgment. *See* Divorce Pending Entry of Final Judgment 1; Final J. of the Family Ct. 2. Accordingly, the Property Settlement Agreement is not enforceable as a judgment of the Family Court, but instead, is enforceable as a property settlement agreement made between Marilyn and Mr. Wilson. *See Riffenburg*, 585 A.2d at 631.

When a dispute arises regarding the terms of a property settlement agreement, the parties may either sue for specific performance or they may file a motion in the Family Court for specific performance. *See Riffenburg*, 585 A.2d at 630; *Bowen v. Bowen*, 675 A.2d 412, 413-14 (R.I. 1996). Additionally, like an ordinary contract, a party may seek nonenforcement based on traditional contract defenses such as fraud, trickery, or mutual mistake.⁴ *See Vanderheiden v. Marandola*, 994 A.2d 74, 78 (R.I. 2010). Under ordinary contract law, contracts that violate the law are void. *See Power v. City of Providence*, 582 A.2d 895, 900 (R.I. 1990).

Here, *even assuming* that the Property Settlement Agreement grants Marilyn the surviving spouse benefit, such a provision would be void for violating the clear mandate of § 45-21.3-1 and Providence Code § 17-189(m)(6).⁵ *See Vanderheiden*, 994 A.2d at 78 (noting that contract

⁴ Unlike an ordinary contract dispute, if the Family Court finds inequity in applying the terms of the agreement as written, the Court may withdraw its approval of the agreement and direct the parties to either negotiate a new Property Settlement Agreement or order them to proceed to trial. *See Gorman*, 883 A.2d at 740. Nevertheless, Marilyn did not ask the Family Court and is not asking this Court to modify the terms of the Property Settlement Agreement due to its inequity. *See generally*, Pl.’s Summ. J. Mem.; Pl.’s Obj.

⁵ This Court is not convinced by Marilyn’s argument that the Final Judgment and Property Settlement Agreement clearly and unambiguously assign her the surviving spouse benefit. *See* Pl.’s Obj. 5-6. Pursuant to the Property Settlement Agreement, Mr. Wilson was required to “nominate [Marilyn] as the designated beneficiary to receive his survivor pension benefits from the City of Providence.” *See* Property Settlement Agreement 5. Similarly, the Final Judgment requires Mr. Wilson to “designate [Marilyn] as beneficiary to receive his survivor pension benefits from the City of Providence” (Pl.’s Ex. J (Final J. of the Family Ct.) ¶ 16.) “[W]here the

defenses apply to Property Settlement Agreements); *Power*, 582 A.2d at 900 (to the extent that a plaintiff relied on the terms of a settlement agreement to provide him with rights, the settlement agreement was void because it directly conflicted with the Providence Retirement Act). Accordingly, to the extent that Marilyn claims the provisions of the Property Settlement Agreement assigned her a right to the surviving spouse benefit pursuant to § 45-21.3-1 and Providence Code §17-189(m)(6), that provision of the Property Settlement Agreement is void because it directly conflicts with the clear and unambiguous language of § 45-21.3-1 and Providence Code § 17-189(m)(6). *See Vanderheiden*, 994 A.2d at 78; *Power*, 582 A.2d at 900.

Further, contrary to Marilyn's argument, the Court's holding will not destabilize the finality of divorce decrees or undermine the authority of the Family Court. *See Pl.'s Summ. J. Mem. 20*. The Court's decision merely reflects that a property settlement agreement which attempts to grant a spouse property in violation of the law is ineffectual. This is not a novel

same subject matter is treated both in a divorce judgment and in a nonmerged separation agreement, then the terms as stated in the separation agreement shall be binding and the divorce judgment is not enforceable or modifiable with respect to that matter." *Riffenburg*, 585 A.2d at 631. Here, the Property Settlement Agreement does not require Mr. Wilson to name Marilyn as his surviving spouse. *See id.* Accordingly, the Property Settlement Agreement could be reasonably interpreted as directing Mr. Wilson to name Marilyn as the beneficiary to receive the death benefits available under Providence Code §§ 17-189(m)(4), 17-190, or it could be reasonably interpreted as directing Mr. Wilson to name Marilyn as his surviving spouse to receive the surviving spouse benefit under Providence Code § 189(m)(6). *See id.*; *see also Carney v. Carney*, 89 A.3d 772, 776 (R.I. 2014) (a property settlement agreement is ambiguous when it is reasonably susceptible to different interpretations).

However, it is still appropriate to grant summary judgment because assuming for the sake of this Decision that the Property Settlement Agreement assigned Marilyn the surviving spouse benefit, that provision of the Property Settlement Agreement would be ineffectual for violating the clear and unambiguous language of Rhode Island General Laws § 45-21.3-1 and Providence Code § 17-189(m)(6). *See Power*, 582 A.2d at 900 (assuming for the sake of summary judgment that a third party was a beneficiary of a settlement agreement for the purposes of finding the agreement was void for being illegal).

concept. *See McJunkin v. McJunkin's Estate*, 493 S.W.2d 278, 280 (Tex. Civ. App. 1973) (collecting cases).

Additionally, Marilyn argued extensively that: (1) the Family Court has the power to equitably divide pension benefits; (2) unassignable pension benefits are subject to equitable division; (3) the final divorce granted Marilyn an unalienable property interest in the surviving spouse benefit; and (4) the Family Court has the power to bind third parties to a divorce. *See* Pl.'s Summ. J. Mem. 14-21; Pl.'s Obj. 2-4; Pl.'s Reply Mem. 4-6. All of these arguments fail for the same reason: notwithstanding the Family Court's authority to equitably divide pension benefits, the Family Court does not have the authority to order an administrative agency to issue pension benefits in violation of the statutory provisions under which the agency operates. *See Furia*, 638 A.2d at 552. Accordingly, despite the Family Court's clear authority to equitably divide marital property, it does not have the authority to order the City's Employee Retirement System to distribute a pension in violation of § 45-21.3-1 and Providence Code § 17-189(m)(6). *See Furia*, 638 A.2d at 552. Marilyn's reliance on the Family Court's Decision in *Loveless* is unavailing because although the *Loveless* Court designated the decedent's ex-wife as the decedent's "surviving spouse" for the purposes of receiving survivor pension benefits, there was no current spouse in *Loveless* who was also claiming the surviving spouse benefit. *See* Pl.'s Ex. BB (*Loveless* Order) 1. Furthermore, the decision of the Family Court in *Loveless* is not binding on this Court.

As such, notwithstanding the Property Settlement Agreement and Final Judgment of Divorce, Diane Wilson, rather than Marilyn Wilson, is Mr. Wilson's "surviving" and "dependent

spouse” under the material, undisputed facts of this case and pursuant to the plain and unambiguous language of § 45-21.3-1 and Providence Code § 17-189(m)(6).⁶

IV

Conclusion

For the foregoing reasons, the Plaintiff Marilyn Wilson’s Motion for Summary Judgment is denied, and Co-Defendant Diane’s Motion for Summary Judgment is granted.

⁶ Diane argues *in the alternative* that there are several material disputes of fact that preclude summary judgment. *See* Diane’s Obj. 1-10. However, with the exception of her argument that the Property Settlement Agreement is ambiguous, which is addressed *supra*, she points to no *material* dispute of fact that would preclude summary judgment here. *See supra* note 5; *Saltzman*, 434 A.2d at 1344-45. Material facts are those that are “pertinent to the claim or the defense which is actually being asserted.” *Id.* at 1345. Here, Marilyn and Diane are asking this Court to find that they are entitled to Mr. Wilson’s surviving spouse benefit pursuant to § 45-21.3-1, Providence Code §17-189(m)(6), and/or the Property Settlement Agreement/Final Judgment of the Family Court. *See* Diane’s Summ. J. Mem. 1; Pl.’s Summ. J. Mem. 13. Therefore, the facts that are relevant to the Court’s determination of this issue are not in dispute: Mr. Wilson was formerly married to Marilyn, *see* Pl.’s Ex. A (Marriage Certificate to Marilyn) 1; their marriage ended in a Final Judgment for Divorce, *see* Final J. of the Family Ct. 1; the final judgment incorporated, but did not merge the parties Property Settlement Agreement, *see id.* at 2; the Property Settlement Agreement required Mr. Wilson to name Marilyn as “the designated beneficiary to receive his surviving pension benefits from the City of Providence,” *see* Property Settlement Agreement 5; and at the time of Mr. Wilson’s death, he was married to Co-Defendant Diane Wilson. *See* Pl.’s Ex. M (Marriage Certificate to Diane) 1.

Furthermore, to the extent that Diane claims that Marilyn mischaracterizes: (1) a letter dated April 28, 1995, sent by the Employee Retirement System to Marilyn’s former attorney; (2) a letter dated September 14, 1998, by Marilyn’s then-attorney to a pension administrator; (3) a letter dated September 21, 1998 to Edward Lynch at the Employee Retirement System; (4) a fax dated September 21, 1998; and (5) the Family Court’s order granting Marilyn’s post-judgment motion for a writ of execution, Diane fails to articulate why any of these facts are *material* to the current dispute regarding the interpretation of the relevant statute and ordinance as it applies to the undisputed facts. *See generally* Diane’s Obj.



RHODE ISLAND SUPERIOR COURT

Decision Addendum Sheet

TITLE OF CASE: Marilyn L. Wilson v. The City of Providence, et al.

CASE NO: PC-2022-01362

COURT: Providence County Superior Court

DATE DECISION FILED: August 24, 2023

JUSTICE/MAGISTRATE: Thunberg, J.

ATTORNEYS:

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For Defendant: Suzannah Skolnick-Smith, Esq.; Ryan C. Hurley, Esq.;
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